



November 4, 2022

Hon. Barbara C. Moses
Hon. Jennifer L. Rochon
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 10007
VIA ECF ONLY

Re: *Coker v Goldberg & Associates P.C.* 1:21-cv-1803-JLR
Discovery Dispute (Depositions)

Your Honor:

It is always with apologies when I have to bring a discovery dispute to the Court's attention, but unfortunately we must do so again in this case.

I have conferred with counsel for Defendants Louis Lombardi both by email over the past few days and also by telephone this morning for approximately 15 minutes.

As per the scheduling order in this case [Dkt. 38], depositions were originally to be finished by October 10, 2022. By letter motion we asked this to be extended by a month, explaining that "The reason for this request is that Defendants have not produced sufficient discovery responses and documents, even though Plaintiff has been requesting such documents since August 31, 2022," which was granted. [Dkt. 42].

On October 6 we reached out to counsel for Defendants inquiring about deposition date scheduling. Having no response, on October 14, we sent a notice of deposition (for the individual defendant and the 30b6 deponent) to take place next Tuesday, November 8, which is before the amended deadline. We booked our court reporter, cleared our calendars, turned down other engagements for that day, and otherwise made preparations.

Yesterday, November 3, three business days before the deposition, counsel for Defendants indicated that he had learned this past Friday October 28 that his client had a conflict for the noticed date of November 8. The stated reason for the conflict was that the defendant (who is also an attorney) has two immigration court appearances, one in Brooklyn in the morning and one in the Bronx in the afternoon (or possibly vice versa). It is unknown whether Defendant has made any attempt to reschedule these or have someone else cover them.

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Meanwhile, on October 26 defense counsel issued, without any previous attempt to discuss dates, a notice of deposition of the Plaintiff for November 22. On October 31 I emailed Mr. Lombardi asking that they voluntarily withdraw their notice on three grounds: "1. The deadline to conduct depositions is November 10. 2. I am not available November 22; I have a hold on that date for mediation in another case. (I also note 11/22 occurs Thanksgiving week).3. You have signed the pleading, but are not counsel of record in this case."

Discovery is to be completed by December 12 [Dkt. 38]. There is a post discovery pretrial conference currently scheduled for December 15, 2022 [Dkt. 43]. We do not want to reschedule these. This is a small wage and hour matter involving a single plaintiff who worked for Defendants for five weeks, and the case has met with delay after delay. The Plaintiff is eager to abide by the discovery deadline and move the case to adjudication.

Defense counsel indicated that Defendant could make herself available November 14 or 18 (as well as offering a half day of another day, which is not agreeable even though we hope not to need all 7 hours) but at such short notice the undersigned would have to reschedule multiple engagements in order for either of those to work, at great inconvenience to Plaintiff's counsel as well as the other individuals with whom appointments have been set (which we don't think is reasonable for them to ask that we do under the circumstances). Defense counsel also suggested that we propose all dates in December in which the depositions could be conducted. Prior to the discovery deadline and conference mentioned above, December 1 is really the only day we have open, and even that will require some shuffling.

Against this backdrop Plaintiff requests the following: Please

- Compel Defendants to comply with the November 8 noticed deposition date.
 - In the alternative, order Defendants to make themselves available for deposition on December 1, beginning at 9:30, via remote technology (Zoom or similar).
- Quash Defendants' notice of Plaintiff's deposition, as untimely and
- Keep the current discovery deadline and pretrial conference, as scheduled

Thank you for your consideration of these matters.

Sincerely,



Penn Dodson, Esq.

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